

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

ROBERT BAYLIS,

Plaintiff,

and

EDUARDO PEREZ; et al.,

Plaintiffs - Appellants,

v.

COUNTY OF RIVERSIDE; et al.,

Defendants - Appellees.

No. 04-55580

D.C. No. CV-01-00535-SGL

MEMORANDUM*

ROBERT BAYLIS,

Plaintiff - Appellee,

and

EDUARDO PEREZ; et al.,

Plaintiffs,

v.

No. 04-55706

D.C. No. CV-01-00535-SGL

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

COUNTY OF RIVERSIDE,

Defendant - Appellant,

and

TED KUBOTA; et al.,

Defendants.

Appeal from the United States District Court
for the Central District of California
Stephen G. Larson, Magistrate Judge, Presiding

Argued and Submitted December 8, 2005
Pasadena, California

Before: LEAVY and RAWLINSON, Circuit Judges, and MAHAN^{**}, District Judge.

Plaintiffs/Appellants Eduardo Perez and Nanci Wisznia appeal the district court's order granting judgment as a matter of law (JMOL) to Defendants on their First Amendment claims. Defendants/Cross-Appellants County of Riverside and county officials cross-appeal the district court's order denying their motion for a new trial and their motion for JMOL as to Plaintiff/Appellee Robert Baylis' First Amendment claims.

^{**} The Honorable James C. Mahan, United States District Judge for the District of Nevada, sitting by designation.

1. Proceedings before a judicial or administrative body constitute a matter of public concern if the speech is about “potential or actual discrimination, corruption, or other wrongful conduct by government agencies or officials.”

Alpha Energy Sav., Inc. v. Hansen, 381 F.3d 917, 925 (9th Cir. 2004) (citations omitted).

2. Appellee Robert Baylis’ testimony before the grand jury touched on matters of public concern, as the grand jury was investigating budget issues and mismanagement in the county’s detention services program. Viewing the evidence in the light most favorable to Baylis, the evidence at trial supports the jury’s verdict that Baylis was retaliated against in violation of the First Amendment. *See Ostad v. Oregon Health Sciences Univ.*, 327 F.3d 876, 881-82 (9th Cir. 2003) (explaining the standard of review).

3. Under *Connick v. Myers*, 461 U.S. 138, 148 (1983), the critical inquiry in determining whether a public employee’s speech addresses a matter of public concern is whether the employee’s purpose was to bring some actual or potential wrongdoing to light. We have concluded that speech concerned unprotected personnel matters when the employee was “complaining about her *own* job

treatment, not personnel matters pertaining to others.” *Thomas v. City of Beaverton*, 379 F.3d 802, 808 (9th Cir. 2004) (emphasis in the original) (citations omitted).

4. Perez and Wisznia’s expressions constituted matters of public concern because they addressed potential unlawful conduct, misuse of public funds and mismanagement within a government agency. *See Alpha Energy Sav., Inc.*, 381 F.3d at 926 (explaining that this Court has “held that when government employees speak about corruption, wrongdoing, misconduct, wastefulness, or inefficiency by other government employees, their speech is inherently a matter of public concern.”) (citations and alteration omitted). Perez and Wisznia voiced their support for Baylis and their concern about the manner in which the personnel investigation of Baylis was proceeding. Their actions were directed toward “personnel matters pertaining to others,” conduct we have determined to be protected under the First Amendment. *See Thomas*, 379 F.3d at 808. Having heard such evidence, the jury reasonably concluded that Perez and Wisznia established a First Amendment retaliation claim. *See Id.* at 807-08. Therefore, the district court erred in granting judgment as a matter of law against Perez and

Wisznia.¹ *See Monroe v. City of Phoenix*, 248 F.3d 851, 861 (9th Cir. 2001) (holding that “[j]udgment as a matter of law is proper when the evidence permits only one reasonable conclusion and the conclusion is contrary to that of the jury.”) (citation omitted). However, the district court properly denied judgment as a matter of law as to Baylis’ claim because the jury’s verdict is consistent with the evidence. *See Josephs v. Pacific Bell*, No. 03-56412, 2006 WL 903224, at *9-11 (9th Cir. Apr. 10, 2006) (affirming the district court’s decision that the employer was not entitled to JMOL because the evidence supported the jury’s verdict.).

5. “A district court’s denial of a motion for a new trial . . . is ‘virtually unassailable’ and is subject to reversal only if there is a complete absence of evidence supporting the jury’s verdict.” *Freund v. Nycomed Amersham*, 347 F.3d 752, 764 n.13 (9th Cir. 2003) (citation omitted). As discussed above, there was no

¹Our esteemed colleague in dissent is of the view that the “statements and actions of Perez and Wisznia in support of Baylis . . . did not involve matters of public concern.” However, it is settled that one who lends support to an individual who is subjected to adverse consequences in retaliation for exercising his First Amendment rights enjoys a protected status as well. *See Thomas*, 379 F.3d at 808-09; *see also Ulrich v. City and County of San Francisco*, 308 F.3d 968, 978-79 (9th Cir. 2002); *Alpha Energy Sav., Inc.*, 381 F.3d at 925-26. This line of authority supports the jury’s verdict in favor of Perez and Wisznia.

lack of evidence to support the jury's verdict. Therefore, the district court properly denied the motion for new trial. *See Freund*, 347 F.3d at 764, n.13.

6. The district court enjoys broad discretion in ruling on evidentiary matters. *Tritchler v. County of Lake*, 358 F.3d 1150, 1155 (9th Cir. 2004). Admission of evidence regarding Baylis' termination, his EEOC complaints and Plaintiffs' numerous relocations were all admitted within the court's discretion as relevant evidence. *See Hangarter v. Provident Life and Acc. Ins. Co.*, 373 F.3d 998, 1019 (9th Cir. 2004) (discussing the admissibility of relevant evidence.).

The judgment as a matter of law granted by the district court on Perez and Wisznia's First Amendment claims is **REVERSED** and the case is **REMANDED** for the district court to REINSTATE the jury's verdicts in their favor. The jury's verdict and the district court's denials of the motions for judgment as a matter of law and new trial on Baylis' First Amendment claim are **AFFIRMED**.

AFFIRMED in part, REVERSED and REMANDED in part. Each party is to bear its costs on appeal.